



September 9, 2013

TO: PROSPECTIVE PROPOSERS

SUBJECT: **ADDENDUM NO. 1 – Request For Proposals For the Collection, Transportation Processing and Diversion of Recyclable Materials and Other Materials and For the Collection, Transportation and Disposal of Municipal Solid Waste**

Mayor
Scott Voigts

Mayor Pro Tem
Kathryn McCullough

Council Members
Peter Herzog
Adam Nick
Dwight Robinson

City Manager
Robert C. Dunek

The following changes are hereby made to the RFP. Each proposer shall include a signed copy of this Addendum with their proposal. Failure to do so may cause the proposal to be disqualified.

Attached are the following documents:

1. **Responses to Submitted Questions From Proposers**
2. **Proposal Process Integrity Rules Approved by the City Council on August 6, 2013.**
3. **Changes and Corrections to the Following Sections of the Franchise Agreement and Attachments** (please note new added text is indicated in **bold** font and all deleted text is noted by ~~strikethroughs~~):
 - a. Section 4.01 of the Franchise Agreement concerning ADC to conform with Section 5.03.
 - b. Section 14.02 A of the Franchise Agreement is revised to prohibit assignments to "Affiliates" without the written consent of the City.
 - c. Section 3.5 of Attachment B "Scope of Work" is added to provide weekly MSW collection services at the City's 44 bus shelter locations and 45 bus bench locations.

As a reminder, all forms in its original format are available on the City's website at <http://www.lakeforestca.gov/services/businesses/proposals.asp>. In addition, if preferred, proposers can email Irene Kha and request that a copy of the Franchise Agreement and the Attachments be placed on a CD-ROM and made available for pickup at Lake Forest City Hall at the Public Works desk.

A Mandatory Pre-Submittal Meeting was held on August 7, 2013. Representatives of the following companies attended the meeting:

Athens Services
CR&R, Incorporated
Otto Environmental Systems North America, Inc.
Rainbow Environmental Services
Rehrig Pacific Company
Republic

www.lakeforestca.gov



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Ware Disposal Co., Inc.
Waste Management

The City Council approved the attached Proposal Process Integrity Rules on August 6, 2013. All companies that attended the Mandatory Pre-Submittal Meeting on August 7, 2013 have signed the acknowledgement and agreement form for the Proposal Process Integrity Rules. The attached Proposal Process Integrity Rules are in effect with regard to this RFP process.

Proposals are still due on September 26, 2013 by 3:00 pm as described in Section 1.3.2 in the RFP.

This addendum consists of 2 pages plus five attachments.

Regards,



Tom Wheeler P.E.
Director of Public Works

Receipt of Addendum 1 is hereby acknowledged.

Signed: _____

Proposers Name: _____

Date: _____

CITY OF LAKE FOREST RFP

PROPOSER QUESTIONS AND RESPONSES FROM CITY

RFP = Request for Proposals

FA = Draft Franchise Agreement

1. FA. Would the City provide a Word file of the draft franchise agreement, to facilitate preparation of contract exceptions?

ANSWER: YES THE CITY WILL PROVIDE AN ELECTRONIC COPY OF THE FRANCHISE AGREEMENT AND ATTACHMENTS IN A WORD FORMAT. HOWEVER, ALL EXCEPTIONS WILL STILL NEED TO BE INDIVIDUALLY LISTED ON PROPOSAL FORM 20.

2. RFP, Section 1.4.1. Waste Management wishes to clarify that it can contact City staff other than the RFP coordinator with respect to matters related to performance of services under the current franchise agreement. The contacts would not be related to this RFP.

ANSWER: PLEASE CONTACT IRENE KHA AND SHE WILL REFER YOU TO ANY OTHER CITY STAFF AS NEEDED.

3. RFP, Section 3.1.4, FA, Section 6.02. Would the City reconsider its requirement for a copy of a signed agreement between the proposer and any non-owned facility? Those agreements would disclose confidential information, such as pricing, and may relate to services to more than one jurisdiction. A written statement from the proposer or the third party facility that it has sufficient capacity to handle the material from the City should be adequate to address the City's needs. Also, would the City waive this requirement as to Waste Management, since it is the current franchisee and third party facilities are already being utilized, demonstrating available capacity?

ANSWER: THE CITY NEEDS TO MAINTAIN THE REQUIREMENT FOR A SIGNED AGREEMENT. THE NAMES OF OTHER JURISDICTIONS MAY BE REDACTED AS WELL AS THE PRICES ARRANGED FOR THE OTHER JURISDICTIONS.

4. RFP, Section 3.1.5; FA, Attachment B, Section 1.06, last paragraph. Setting two separate baseline dates could be counterproductive to the City's desire to maximize diversion as soon as possible. As currently structured, Contractor would be incentivized to do only just enough to obtain the Phase 1 extension, knowing that any bins in excess of 300 would not count toward the Phase 2 extension. This requirement is also inconsistent with City's encouragement that diversion programs be implemented more rapidly.

THE CITY HAS CAREFULLY CONSIDERED THE MINIMUM NUMBER OF BINS, THE PACE AND THE APPROACH THAT IT WISHES TO UTILIZE IN SATIFYING STATE MANDATES. NO CHANGES TO THE FRANCHISE

AGREEMENT ATTACHMENT B, SECTION 1.06 WILL BE MADE AT THIS TIME.

5. RFP, Proposal Form 19. Does the parent disclosure requirement extend to the entire nation, as opposed to Southern California? Litigation arising in other states or even other parts of California has little relevance to the assessment of performance in a local market.

ANSWER: THE CITY CONSIDERS A COMPANY'S OVERALL LEGAL POSITION AND EXPOSURES AS PART OF ITS EVALUATION. PLEASE PROVIDE THE INFORMATION REQUESTED PER THE RFP.

6. FA, Section 4.06.A. Is Contractor required to collect waste from residential cart customers that is not placed in carts?

ANSWER: NO.

7. FA, Section 4.08, second paragraph. Please clarify whether Saturday collection could occur during holiday weeks where the holiday occurs earlier during the week than the preceding Friday?

ANSWER: YES, SATURDAY COLLECTION WILL OCCUR DURING THOSE WEEKS.

8. FA, Section 4.09.B. Waste haulers do not manufacture the equipment, and for this reason EPA noise standards for heavy vehicle manufacturers would be the most appropriate requirement.

ANSWER: NOISE STANDARDS ARE AS STATED IN THE DRAFT CONTRACT IN THE RFP.

9. FA, Section 4.10.B. Would the City consider implementation of a snapshot program, where an overage fee is assessed and the level of service is increased upon two documented instances of container overfilling?

ANSWER: THE CITY SPECIFICALLY DOES NOT WANT AN AUTOMATIC SYSTEM OF OVERAGE FEES AND SERVICE INCREASES. SECTION 4.10.B IS PURPOSELY DESIGNED TO HAVE A HIGH DEGREE OF INTERACTION BETWEEN THE CUSTOMER, THE RECYCLING COORDINATORS, AND THE CITY. THIS INTERACTION WILL OCCUR THROUGHOUT THE IMPLEMENTATION AND MAINTENANCE OF DIVERSION PROGRAMS AS THE PROCESS OF ASSESSING SERVICE NEEDS AND THE RESOLUTION OF CONTAMINATION ISSUES EVOLVES.

10. FA, Section 4.14. Ownership of MSW and yard waste should only transfer at the time of collection. Otherwise, Contractor could be responsible for damages or injuries occurring from improper materials placed in the containers after placement in a public area but prior to collection. Until collection occurred, there would be no ability to ascertain whether the containers contained any dangerous (e.g. razor blades), hazardous, improper, reactive, explosive, etc. materials.

ANSWER: PLEASE PROVIDE ALTERNATE LANGUAGE IN PROPOSAL FORM 20, CONTRACT EXCEPTIONS.

11. FA, Section 5.01. Should City direct the use of a different disposal site, would contractor be entitled to a rate adjustment to reflect changes in costs?

ANSWER: IN THE EVENT THAT THE CITY DIRECTED THE CONTRACTOR TO CHANGE DISPOSAL SITES THE PROVISIONS OF SECTIONS 4.12 WOULD APPLY.

12. FA, Section 5.08. Should City direct the use of a new or different processing facility, would contractor be entitled to a rate adjustment to reflect changes in costs?

ANSWER: IN THE EVENT THAT THE CITY DIRECTED THE CONTRACTOR TO CHANGE DISPOSAL SITES THE PROVISIONS OF SECTION 4.12 WOULD APPLY.

13. FA, Section 6.02. What is the scope of the disclosure requirement for permits? Only major permits (for example, solid waste facilities permit, waste discharge requirements), or every permit (for example, business license, building permit, general stormwater permit)?

ANSWER: SOLID WASTE FACILITY PERMIT, WASTE DISCHARGE REQUIREMENTS, AIR BOARD PERMIT, CONDITIONAL USE PERMIT (OR EQUIVALENT), AND GENERAL STORMWATER PERMIT MUST BE SUBMITTED WITH THE PROPOSAL. THE CITY RESERVES THE RIGHT TO REQUEST COPIES OF ADDITIONAL PERMITS DURING THE PROPOSAL EVALUATION PROCESS.

14. FA, Section 6.06. Would Contractor be allowed to count customers that refused recyclables/food scraps collection service despite Contractor's good faith efforts to provide that service? Does City intend to require all multi-family and commercial customers to accept recycling service where they refuse Contractor's efforts? Does the City intend to amend its Code to require that all such customers receive recyclables/food scraps collection service and provide an enforcement mechanism?

ANSWER: NO. THE CITY WILL NOT CONSIDER APPLYING A "GOOD FAITH" STANDARD IN JUDGING SUCCESSFUL PROGRAM IMPLEMENTATION. ALL MULTIFAMILY AND COMMERCIAL CUSTOMERS THAT ARE REQUIRED BY AB 341 TO RECYCLE WILL BE EXPECTED TO OBEY THE LAW. AMENDING THE CITY'S MUNICIPAL CODE IS NOT BEING CONSIDERED AT THIS TIME.

15. Various. Would the City state time deadlines as "business days" rather than "hours" or "working hours"? This minimizes confusion, especially where the request for an activity occurs on a Saturday or the day prior to a holiday.

ANSWER: PLEASE PROVIDE ALTERNATE LANGUAGE IN PROPOSAL FORM 20, CONTRACT EXCEPTIONS.

16. FA, Section 7.04. Would there be a charge for additional MSW, Recyclable Materials or Yardwaste containers?

ANSWER: SEE ATTACHMENT B, SECTION 1.04.1, SECOND AND THIRD PARAGRAPHS. PLEASE UTILIZE PROPOSAL FORM 25 (WHICH BECOMES FRANCHISE AGREEMENT ATTACHMENT D) TO PROVIDE YOUR RATES.

17. FA, Section 8.01.A. Would the bill itemization include franchise fee and other City fees?

ANSWER: NO.

18. FA, Section 11.05.D. Does the definition of hazardous waste also include biohazardous waste, medical waste, designated waste or special waste?

ANSWER: THIS QUESTION WILL BE ADDRESSED IN ADDENDUM 2.

19. FA, Section 12.02, second paragraph. Does the City intend to undertake the Proposition 218 notice and protest process with respect to rate adjustments, to the extent required? Would it agree to commit to undertake the process, to the extent required?

ANSWER: SEE ALSO SECTION 12.03. THE CITY PLANS TO ISSUE A PROPOSITION 218 NOTICE (AT CITY EXPENSE) PRIOR TO HOLDING THE PUBLIC HEARING TO CONSIDER THE RATES TO BE ESTABLISHED FOR THE NEW FRANCHISE. NO CHANGE TO THE FRANCHISE AGREEMENT LANGUAGE IS BEING MADE. PROPOSERS CAN USE PROPOSAL FORM 20 IF THEY WISH TO TAKE AN EXCEPTION TO THE FRANCHISE AGREEMENT LANGUAGE CONTAINED IN THE RFP.

20. FA, Section 12.07. Would the rate adjustment reflect changes in Contractor's revenues as well as costs? This could occur, for instance, where the City directs the use of a non-owned or operated processing facility, where previously an owned or operated facility had been utilized.

21. ANSWER: THIS QUESTION WILL BE ADDRESSED IN ADDENDUM 2.

22. FA, Section 13.01.L. Would there be an event of default where the violation had been timely remedied, in accordance with the requirements of the regulatory agency?

ANSWER: THE DEFAULT DOES NOT APPLY UNTIL "*....SUCH FINDING HAS BECOME FINAL AND NOT SUBJECT TO FURTHER APPEAL.*"

23. FA, Section 13.09.B.2. Is the requirement to close the container lid after collection applicable to all lines of business? In particular, cart lids may remain open following collection due to the characteristics of the automated side load collection vehicle. In addition, many customers prefer the cart lid to remain open following collection, since it is their signal to return the carts to the residence.

ANSWER: PLEASE PROVIDE ALTERNATE LANGUAGE IN PROPOSAL FORM 20, CONTRACT EXCEPTIONS.

24. FA, Section 13.09.B.2 and 3. Could the City provide a definition of “discourteous behavior” and “excessive noise”? Since both are subjective, they are not good candidates for the use of liquidated damages.

ANSWER: PLEASE PROVIDE ALTERNATE LANGUAGE IN PROPOSAL FORM 20, CONTRACT EXCEPTIONS.

25. FA, Section 13.09.E. Would the liquidated damage assessment apply to each customer, or the billing run in the aggregate where the error was common to all billings? Would liquidated damages be imposed where the error was rectified, and any credits applied, on the next billing cycle?

ANSWER: THE LIQUIDATED DAMAGE APPLIES TO EACH CUSTOMER FOR CHARGES NOT IN ACCORDANCE WITH THE CITY’S APPROVED SCHEDULE OF RATES. IN ASSESSING LIQUIDATED DAMAGES, THE PROCEDURES IN SECTION 13.09 WILL BE FOLLOWED.

26. FA, Section 14.02.A. Would the approval provisions apply to an assignment to an affiliate of Contractor with the same parent guarantor?

ANSWER: YES. CITY CONSENT IS REQUIRED FOR ASSIGNMENT(S) TO ANY “PERSON” INCLUDING AN AFFILIATE. PLEASE SEE THE REVISED CONTRACT LANGUAGE IN SECTION 14.02A OF THE FRANCHISE AGREEMENT THAT IS INCLUDED IN THIS ADDENDUM 1.

27. FA, Section 14.03. Please define the scope of subcontractors that would require City approval. Would that extend to such things as uniform laundry services? Would it be limited to subcontractors with direct contact with citizens?

ANSWER: THE OPERATIVE PHRASE IS...” *shall not engage any subcontractors to perform any of the services required of it by this Franchise.*”.

28. FA, Attachment A. Are assisted living facilities considered a commercial and business establishment?

YES.

29. FA, Attachment B, Section 1.01.1. Would the City waive the requirement to approve the billing format as to Waste Management, since it is already familiar with the format?

ANSWER: NO. THE SELECTED PROPOSER WILL BE REQUIRED TO CONFORM TO THIS REQUIREMENT.

30. FA, Attachment B, Section 1.04.1. Would the City accept Carts with a green body and a different colored lids for MSW, Recyclable Materials, and Yardwaste, which is currently used and would be familiar to residents?

NO. THE SELECTED PROPOSER WILL BE REQUIRED TO CONFORM TO THE REQUIREMENT IN ATTACHMENT B, SECTION 1.04.1.

31. FA, Attachment B, Section 1.5. Does the “no additional cost” requirement apply to the cost of the preparation of the proposal, or to the implementation of the new program?

ANSWER: “NO ADDITIONAL COST” APPLIES TO THE PREPARATION OF THE PROPOSAL.

32. FA, Attachment B, Section 3.13.1. Please provide a current listing of City events and the level of service at each. For large venue events, it is the City’s intention to impose the obligations of the event organizer onto Contractor (e.g. reporting), or are Contractor’s obligations limited to those imposed on it by the Public Resources Code? Would Contractor be allowed to charge for any services that go beyond its statutory obligations?

ANSWER: ATTACHMENT B, SECTION 3.13.1 LISTS THE CITY’S CURRENT SPECIAL EVENTS. AS NOTED, THE SPECIFIC EVENTS MAY BE CHANGED AND/OR INCREASED UP TO 20 PER YEAR AT NO CHARGE. THE CONTRACTOR’S OBLIGATIONS ARE THOSE CONTAINED WITHIN THE FRANCHISE AGREEMENT INCLUDING ATTACHMENT B AND THE REPORTS DESCRIBED THEREIN.

33. Various. Would the City allow the combining of the many reports required under this Agreement into the quarterly or annual reports?

ANSWER: NO. THE CITY REQUIRES ALL THE REPORTS IDENTIFIED IN THE AGREEMENT AT THE TIMES AND IN THE MANNER DESCRIBED IN THE AGREEMENT AND ATTACHMENT K.

34. FA, Attachment J. If a rate increase otherwise allowable pursuant to an index were not provided due to the annual rate cap, would the disallowed portion be carried over to the next years’ rate adjustment (provided that it did not cause an exceedance of the annual cap)?

ANSWER: NO

35. FA, Attachment K. Would Contractor be entitled to a rate adjustment where the City requests additional reports, or a request in the format of layout of the reports increases Contractor’s costs?

ANSWER: NO. THE DUTIES OF THE TWO RECYCLING COORDINATORS INCLUDE REPORT PREPARATION.

The following questions were asked at the Mandatory Pre-Submittal Meeting held on August 7, 2013:

What is the amount of the franchise fee?

ANSWER: 5% SEE SECTION 12.05 OF THE FRANCHISE AGREEMENT.

Who owns the existing carts?

THE CURRENT FRANCHISE HOLDER, WASTE MANAGEMENT, OWNS THE CARTS.

NOTE: ADDITIONAL QUESTIONS RAISED AT THE PRE-SUBMITTAL MEETING WILL BE ADDRESSED IN ADDENDUM 2.

PROPOSAL PROCESS INTEGRITY RULES

Rules To Be Followed By All Proposers

In order to ensure a fair RFP process the City Council has established a Process Protocol to govern interactions between the Proposers, the City, and the City's representatives during the process. All Proposers shall strictly adhere to the following rules:

1. All proposals submitted will be final. No changes or alterations will be accepted after proposal submission.
2. From the date that the City Council authorizes the issuance of the Request for Proposal (RFP), July 22, 2013, until the City Council awards a Franchise Agreement, all contacts between Proposers and the City shall be through the City's RFP Coordinator, Irene Kha. Contact information for the RFP Coordinator is contained above. Any attempt to contact, or any contact made by any other person, including an elected or appointed official of the City, is grounds for disqualification of the proposer from the process.
3. All substantive questions shall be submitted in writing to the RFP Coordinator.
4. Proposal evaluation committee members will direct all inquiries, e-mails and any other correspondence about the RFP process, to the City-designated staff person.
5. Any Communications from the City to a Proposer will be transmitted simultaneously to all Proposers along with answers to written questions submitted.
6. Any proposer contesting any part of the RFP process or fairness of the RFP process will submit their claim in writing to the City Manager or his designee for review by the City's RFP Evaluation Committee.
7. Any Proposer who fails to recognize or utilize this process of communications will be notified of its violation and may be disqualified from the selection process at the sole discretion of the City Manager.

All Proposers will be asked to sign a formal acknowledgement indicating receipt of, and understanding of these rules, at the pre-submittal conference.

9/09/13 Addendum 1 – REVISIONS TO FRANCHISE AGREEMENT SECTION 4.01 TO CONFORM WITH SECTION 5.03

Franchise Agreement Section 4.01, fourth paragraph is revised as follows to conform with Section 5.03:

When implementing all of the Diversion programs described in Attachment B, Contractor shall follow the CalRecycle Diversion hierarchy as specified in Public Resources Code Sections 40051 and 40196 as follows: Source Reduction, reuse of materials for other purposes which avoid Disposal (not listed in Public Resources Code), Recycling and Composting, environmentally safe Transformation, and environmentally safe Landfill (Disposal). Contractor shall also implement programs and utilize Processing Facilities in order to obtain the highest and best use for Diverted materials. ~~(e.g. Yardwaste shall be composted and used for landscaping applications rather than being chipped or ground and used for alternative daily cover at landfills unless directed otherwise by the City).~~ Contractor shall (a) follow the CalRecycle hierarchy and (b) obtain the highest and best use for Diverted materials, to the satisfaction of the City.

9/9/13 Addendum 1 – Revision of Section 14.02 A of Franchise Agreement Regarding Assignment

14.02. Assignment.

A. **City Consent Required.** Contractor shall not assign its rights or delegate or otherwise transfer its obligations under this Franchise to any other Person (**including an Affiliate**) without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a Contractor default.

9/09/13 Addendum 1 – Addition to Attachment B, Section 3.05.3 MSW Collection at Bus Stops and Benches

3.5 Other Services To Be Provided.

3.05.1 Manual Can Service

Contractor shall only provide manual Can service to Single-Family, Multi-Family and Commercial Customers, using Customer's own containers, where neither Cart nor Bin service is feasible due to the low volume of MSW generated, or the inability to operate automated collection vehicles, or the inability to store or use reasonably at the service location. All exceptions to automated collection service must be approved by City. For Commercial Customers, such service is limited to Customers generating a maximum of one hundred pounds (100lbs.) of MSW per week.

3.05.2 Business Recycling Plans.

Contractor's Recycling Coordinator, in consultation with the City, will prepare a "Recycling Plan" for each business (PARIS code 2030-RC-OSP). The City will prioritize business reviews with those having the largest bills and those requesting it first. Contractor shall review the waste stream, photograph the waste stream and discuss the Recycling plan with the business owner/manager prior to finalization.

3.05.3 MSW Collection at Bus Stops and Benches

Contractor shall provide as needed, but at least weekly, collection and disposal of MSW at 44 City bus shelters and 45 bus benches.